he must satisfy the court that not only that he has property, franchise or personal right over the registration number "PN 1" but that it was incumbent upon the R.I.M.V. Selangor under section 10(1) of the Ordinance to grant to him the registration number "PN 1" when requested to do so on August 2 1980. An order of mandamus applies only where there is a legal right to the performance of a clear legal duty. See also *Koon Hoi Chow* v. *Pretam Singh*[1].

Looking at the provisions of the Road Traffic Ordinance 1958 and the Motor Vehicles (Registration & Licensing) Rules 1959 relating to registration of motor vehicles and the facts of this case it would seem clear to me that there cannot be any property, franchise or personal right of the applicant to the registration number "PN 1". According to the law it is for the Registrar to assign a registration number to a motor vehicle to indicate, among other things, the registration area in which the vehicle is registered. Such mark and number are collectively referred to as the "registration number" under the Ordinance. The proviso to section 10(1)(a) of the Ordinance provides for the exception to the general rule that a registration number assigned to a motor vehicle shall not be assigned to another motor vehicle. The proviso deals with the situation when a reassignment may be permitted. The tenor and language of the proviso to section 10(1)(a) of the Ordinance would seem to attract a narrow construction. I am unable to find in the proviso any power on the part of the Registrar to allow a person to retain a registration number when the person applying has not produced a motor vehicle which has not been previously registered. I agree that the letter of the Registrar dated November 20, 1980 refers to retention but in my opinion the power is merely administrative and not legal. It is surely also against public policy to allow the retention of registration numbers (especially over long periods, in this case 3 years) which would defeat the very object of the statutory provisions relating to registration of motor vehicles which is to provide for systematic and orderly registration.

In this case the fee of $50/– was according to the applicant paid for the retention of registration number "PN 1". According to the Registrar in his affidavit the fee was paid for the cancellation of the said registration number pending the approval for assignment of the said registration number to a new vehicle which was not produced by the applicant. In his cross-examination the Registrar, however, said that the fee was collected under rule 7 of the 1959 Rules which as I pointed out earlier specifically refers to section 10(1) of the Ordinance. In my opinion neither the applicant nor the Registrar has shown that the fee paid was for a purpose provided by law. Since the fee collected could not have been charged under Item 6 nor Item 10 of the Fourth Schedule to the 1959 Rules it was therefore a fee wrongly collected and should be refunded.

Since the applicant has failed to show he has any legal right to the performance of a clear statutory duty by the R.T.M.V. Selangor, the application should be dismissed. Order accordingly.

Due to the peculiar circumstances of this case I shall however make no order as to costs.

Application dismissed.

Solicitors: *Zain & Co.*

ALL MALAYA ESTATES STAFF UNION v. DEVON PROCESSING SDN. BHD. KLANG AND THE INDUSTRIAL COURT

[O.C.J. (Hashim Yeop A. Sani J.) February 23, 1982]

[Kuala Lumpur – Originating Motion No. 13 of 1978]

Administrative Law – Certiorari – Order of Industrial Court remitting reference back to Minister – Industrial Relations Act, 1967, ss. 29 & 30.

Labour Law – Industrial Court – Order of Industrial Court remitting reference back to Minister – Whether Industrial Court had jurisdiction to make such an order – Industrial Relations Act, 1967, ss. 29 & 30.

Industrial Court – Jurisdiction – No jurisdiction to remit reference back to Minister.

In this case the Industrial Court had ruled that a reference which had been referred to it by the Minister should be remitted back to the Minister "for the necessary remedial actions to be taken". The applicant applied for an order of certiorari to quash the ruling.

Held, the order of the Industrial Court was made without jurisdiction and the applicant was entitled to the order of certiorari.

Cases referred to:

(1) *V. Subramaniam & Ors.* v. *Craigielea Estate* [1982] 1 M.L.J. 317.

(2) *Assunta Hospital* v. *Dr. A. Dutt.* [1981] 1 M.L.J. 115.

CIVIL SUIT.

D.P. Xavier for the applicant.

V.T. Nathan (*Andrew Saw* with him) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: The Nctice of Motion asked for an order of certiorari to quash the ruling made by the Industrial Court in the award handed down on August 30 1977 in Industrial Court Case No. 160/76. All other grounds set out in the statement accompanying the Notice of Motion were abandoned except the ground on jurisdiction.

The ground on jurisdiction may be classified under two headings which may be summarised as follows:—

(1) The Industrial Court committed jurisdictional error when it failed and/or declined to assume or exercise jurisdiction over the actual trade dispute referred to it by the Minister;

(2) The Industrial Court exceeded its jurisdiction in remitting the reference back to the Minister.

It is to be noticed firstly that the notice of motion itself seeks only for an order of certiorari without having any prayer for an order of mandamus or a general prayer for such other relief as the court may feel justified to grant although the affidavit of the President of the applicant union expressly referred to both orders of certiorari and mandamus. Since the Notice of Motion merely sought for an order of certiorari I will confine my judgment solely on that application.

A brief summary of the background may first be necessary. By a letter dated December 1, 1976, the Minister of Labour and Manpower referred to the Industrial Court the dismissal of 3 employees of the first respondent. According to the copy of the letter from the Ministry the reference appeared to have been made under section 23(2) of the Industrial Relations Act 1967 as then in force. When the parties appeared before the Industrial Court on July 4, 1977 counsel for the company challenged the *locus standi* of the union to represent the three dismissed employees. After hearing arguments the Industrial Court handed down its ruling on this preliminary issue and this appears in the award handed down by the Industrial Court on August 30, 1977. The ruling of the Industrial Court appears towards the end of the award and for convenience it is reproduced below:—

"The court agrees that, in the normal course of events, it would have to adjudicate on a reference made by the Ministry. But once an issue is raised by either party as to its jurisdiction, the court has heard, and will continue to hear, arguments as to whether it has the jurisdiction to entertain such reference. It rejects as untenable the suggestion that it should shut its eyes to the issue raised and proceed with the reference.

For the above reasons, the court is of the view that the Reference in question should be sent back to the Ministry for the necessary remedial steps to be taken, either by the Registrar of Trade Unions and/or by the Ministry itself."

On the question of *locus standi* raised by the first respondent the Industrial Court gave the following ruling:—

"It would, therefore, be premature for the court now to decide as to whether the Union or NUPW by implication, has the right to represent the Claimants."

It was the contention of the first respondent here that the Industrial Court is possessed of wide powers to determine what are the issues relevant before it which it considers expedient for the purpose of disposal of a trade dispute. Therefore, it would be wrong to say that the ruling on the question of *locus standi* was outside the jurisdiction because *locus standi* was already an issue raised in the statement in reply submitted to the Industrial Court. This appears in paragraph 1(iv) in the statement in reply dated May 23, 1977 where it was brought out in clear terms that the company intended to contend that the union was not the proper union to represent the three claimants.

During arguments on the notice of motion counsel for the first respondent referred to the recent judgment of the Federal Court as yet unreported, Federal Court Civil Appeal No. 61 of 1977[1] where the test to ascertain whether the Industrial Court has jurisdiction was discussed and the Lord President said this:—

"To consider the question whether or not the Industrial Court had jurisdiction or had exceeded it, we must consider the issues before it, and to do this it is necessary to look at the written case for the employees (at page 75 of the appeal record) and the estate's written reply (at page 80) submitted to the Industrial Court."

It follows therefore the argument goes that since the subject of *locus standi* was well within the jurisdiction of the Industrial Court to consider, if it is made in error of law it has been made within jurisdiction.

To get the question in its proper perspective it is necessary to examine what in fact is the ruling complained of by the applicant union. On reading the award and excerpts therefrom reproduced

earlier it can be seen that what is really the subject of the application for certiorari here is the order of the Industrial Court referring back to the Ministry the reference in question "for remedial steps to be taken" and the further suggestion that another reference be made under section 20 in which event the claimants may have to give up membership of the union.

In my opinion from whatever angle you look at it the order of the Industrial Court is certainly an order made without jurisdiction. I say this for the following reasons:– First, the reference of the Minister itself has not been challenged. The Federal Court was held that once the Minister decides to make a reference and his order is not set aside the Industrial Court is seized with jurisdiction to hear the dispute and it is implicit in the Act that the Industrial Court must exercise that jurisdiction. See *Assunta Hospital* v. *Dr. A. Dutt*[2]. The Industrial Court cannot pretend to usurp the function of the Minister by further suggesting another reference under section 20 of the Act.

Secondly, by virtue of section 29(g) of the Act (which deals with the general power of the Industrial Court to do all such things as are necessary or expedient) and section 30(1) (which gives the Industrial Court power to make an award relating to all or any of the issues before it) the question of *locus standi* of a party to a dispute must certainly be an issue within jurisdiction for how else would the Industrial Court exercise its discretion whether to order any party be joined, substituted or struck out according to section 29(a) of the Act. A cursory glance at the ruling on the question of *locus standi* reproduced from the award earlier would reveal that no such discretion was exercised at all by the Industrial Court. It may well be that the Industrial Court properly declined to make an order to add or substitute a party to the dispute because it could not in the first place determine who was really the proper party to represent the claimants. Or the Industrial Court might have felt that it had no power to determine the issue. In either case it was not open to the Industrial Court to remit the reference back to the Ministry. The Industrial Court could for example adjourn the hearing of the main dispute until the question as to who was the proper party to represent the claimants be sorted out first either by itself or elsewhere. In short the Industrial Court had no power to order that the reference be remitted back to the Ministry or to suggest another reference under section 20 of the Act.

For the above reasons I held that the applicant union was entitled to an order of certiorari as prayed.

Application allowed.

Solicitors: *D.P. Xavier & Co.; Ng Yook Woon, Andrew T.C. Saw & Zahardin.*

SYARIKAT BERPAKAT v. LIM KAI KOK

[O.C.J. (Hashim Yeop A. Sani J.) April, 19, 1982]

[Kuala Lumpur – Originating Motion No. A4 of 1982]

Practice and Procedure – Stay of Execution – Discretion of court – Stay to be granted only if there are special circumstances.

In this case judgment had been entered in the Sessions Court against the applicant for the sum of $12,788/– at the suit of the respondent. The applicant applied for stay of execution to the Sessions Court and the Sessions Court allowed the stay on condition that the applicant deposited the judgment sum with the solicitors for the respondent. Subsequently the applicant applied instead to pay the judgment debt by monthly instalments on the grounds that he was in financial difficulties. This was refused. The applicant thereupon applied to the High Court.

Held: as a rule the court will only grant stay if there are special circumstances. In this case no special circumstances had been shown to justify a stay.

Cases referred to:

(1) *Serangoon Garden Estate Ltd.*, v. *Ang Keng* [1953] M.L.J. 116.

(2) *Monk* v. *Bartram* [1891] 1 Q.B. 346.

CIVIL SUIT.

A. Krishnan for the applicant.

A. D. Rajah for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J: This was an application for stay of execution or alternatively to allow the applicant to pay the judgment sum with interests and costs by monthly instalments of $500/= to be held in trust by the solicitors for the respondent.

From what can be gathered from the affidavit of the applicant and the reply by the respondent, judgment in a sum of $12,788/= together with interest and costs was entered in the Sessions Court against the defendant (now applicant). The